Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1998

EDWARD J. SPELLACY, JR., et al.,

Petitioners,

v.

AIRLINE PILOTS ASSOCIATION-INTERNATIONAL, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY BRIEF

MARK R. KRAVITZ
Counsel of Record
DANIEL J. KLAU
WIGGIN & DANA
One Century Tower
Post Office Box 1832
New Haven, CT 06508
(203) 498-4400

Counsel for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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REPLY BRIEF FOR PETITIONERS

In its opposition, ALPA contends that the question presented, which concerns the proper scope of review of a motion for judgment as a matter of law under Rule 50, "amounts, at most, to a matter of different verbal formulations, not substance." (Opp. at 22.) ALPA's attempt to downplay the importance of this constitutional issue by mischaracterizing it as a matter of mere semantics is without merit. The standard of review that the court of appeals applied in this case – which permits a court to decide whether the movant's evidence "overwhelms" the non-movant's evidence – puts at risk the constitutional right of parties to have disputed issues of fact resolved by juries. The question presented, therefore, is the very essence of substance, not semantics. Accordingly, the Court should grant this Petition to establish that the proper legal standard constrains a court to considering only the evidence favorable to the verdict, and such other evidence that the jury, as a matter of law, cannot discredit.

ARGUMENT

1. ALPA approaches this case as one in which the court of appeals, after considering all of the evidence favorable to the jury verdict, determined that such evidence did not support the jury's unanimous verdict. That is clearly *not* what the court of appeals did. Instead, the court applied a legal standard that permitted it to determine "whether there is such an *overwhelming* amount of evidence in favor of [ALPA] that reasonable and fair

minded [jurors] could not arrive at a verdict against it." (Pet. App. A10) (emphasis added). As both articulated and actually applied by the court of appeals, that standard necessarily required the court to consider *all* of the evidence, including disputed evidence presented by ALPA. (Pet. at 19-21.)

Conspicuously absent from ALPA's brief is *any* reference to the "overwhelming evidence" standard of review that the court of appeals invoked. Because it chooses to ignore the court of appeals' articulation of its standard of review, ALPA never addresses the fundamental and undeniable fact that the court's "overwhelming evidence" standard improperly equates motions for judgment as a matter of law under Rule 50 with motions for a new trial under Rule 59 on the ground that the verdict is against the weight of the evidence. (Pet. at 21.) Similarly absent from ALPA's brief is any explanation of how the court of appeals' "overwhelming evidence" standard can be reconciled with this Court's decision in *Wilkerson v. McCarthy*, 336 U.S. 53 (1949). (Pet. at 22.)[1]

ALPA's conscious decision to ignore the court of appeals' own statement of its standard of review, as well as these and other arguments from the Petition, only underscores the poverty of its argument that the Petition raises nothing more than an issue of semantics. Simply

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[1] In *Wilkerson*, the Court stated that it is the "established rule that in passing upon where there is sufficient evidence to submit an issue to the jury we need look only to the evidence and reasonable inferences which tend to support the case of a litigant against whom a peremptory instruction has been given." *Wilkerson*, 336 U.S. at 57.

put, ALPA cannot make the court of appeals' description of its standard of review disappear by ignoring it, and unless this Court grants the Petition other courts will seize upon the court of appeals' decision to conflate the standards of review under Rules 50 and 59 and to deny parties their constitutional right to a jury trial.

2. A comparison of the parties' wildly competing statements of the case confirms that the portion of the evidence that a court is entitled to consider under Rule 50 can have an important, if not dispositive, impact on the outcome of a motion under the rule. *See Schwimmer v. Sony Corp. of America*, 459 U.S. 1007 (1982) (White, J., stating proposition in dissent from denial of petition for writ of certiorari). The record in this case thus provides the Court with the perfect vehicle in which to explore and reaffirm the constitutional prerogative of parties to have disputed issues of fact decided by a jury.

More specifically, the pilots presented evidence that Pan Am had ample time, money and simulator capacity to select pilots for training based on strict system seniority, in accordance with their collective bargaining agreement, the PWA. Nevertheless, in their desperation to get out of Pan Am, the union officials breached their fiduciary duty under federal labor law to represent the pilots honestly and in good faith. They did so by entering into a secret agreement with Vito Cutrone to use a requalification training methodology, which "just happened" to get them to Delta. By entering into this secret agreement, Mr. Cutrone secured the cooperation of the union, which Pan Am needed and which it had directed Cutrone to secure, in order to complete the transaction with Delta. In stark contrast to this evidence of deception

and self-dealing, ALPA argued that constraints really did exist and that requalification training was the only way that Pan Am could have trained the number of pilots necessary to meet the Delta quota. (Pet. at 5-14.)

It was the *jury's* job to sort out this conflicting evidence and decide whether constraints did or did not exist and whether the union officials had adopted the requalification training methodology honestly and in good faith, or, as the pilots contended, to serve their own selfish interests. In other words, it was the jury's responsibility to determine what the "factual" landscape was at the time of the union's actions; *see Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 67 (1991); and to determine the union officials' motive, *i.e.*, their state of mind, in adopting the requalification training methodology.

Had the court of appeals been constricted to considering the sufficiency of the evidence favorable to the jury's unanimous verdict, it could not have affirmed the grant of judgment to ALPA unless it determined that the foregoing evidence, although favorable to the pilots, was nonetheless legally insufficient to support the finding implicit in the jury's verdict, *i.e.*, that sufficient time, money and simulator capacity existed to permit training according to system seniority. The court, however, never even discussed the *pilots'* evidence on the constraints issue. Nor did it address the issue whether the jury could have reasonably inferred, from the evidence of what even the union concedes were "inaccurate" reports about the Kagel arbitration (*see* Opp. at 14) and numerous other matters, that the union officials had intentionally lied to the pilots about their reasons for adopting the requalification training program. Instead, the court adopted ALPA's

version of events, lock stock and barrel. That version, however, was based principally on Mr. Cutrone's disputed and contradicted "constraints" testimony.[2]

Thus, in accepting ALPA's version of events and Mr. Cutrone's disputed testimony, the court of appeals invaded the province of the jury to weigh the evidence and make a credibility determination about one of the most important witnesses in the case. The court of appeals was only able to do this because it expressly adopted a standard of review for motions under Rule 50 that permits courts to consider *and* weigh all of the evidence, both the pilots' and the union's.

3. ALPA argues that amendments to Rule 50 in 1991 had the effect of eliminating any division among the courts of appeal as to the proper standard of review under Rule 50 and that, since 1991, courts have applied a uniform standard to motions under the rule. (Opp. at 18-19.) That argument is without merit for two reasons. First, the 1991 amendment to Rule 50 "effect[ed] no change in the existing standard" for resolving motions

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[2] ALPA seeks to distance itself from Mr. Cutrone by stating that the plaintiffs in the *Duke* action had subpoenaed him to testify at trial. (Opp. at 13.) In fact, however, in ALPA's opening statement at trial, ALPA presented Mr. Cutrone as *its* star witness. ALPA also argues that the testimony of Mr. Cutrone was "corroborated by uncontradicted documentary evidence" establishing that Pan Am had decided in August 1991 that it would not provide training on the A-310 according to seniority. (*Id.* at 26.) What ALPA fails to tell the Court, however, is that Pan Am management relied upon Mr. Cutrone's analysis of simulator capacity in making that decision. Thus, by presenting affirmative evidence discrediting Mr. Cutrone's analysis, the pilots also challenged the basis of Pan Am's decision.

under the rule. Fed. R. Civ. P. 50 advisory committee's note (1991 amendment).[3]

Thus, the post-1991 cases that ALPA cites in a footnote to its brief (*see* Opp. at 19, n.6) are no more relevant to the question of what evidence a court may consider than are pre-1991 cases. Second, ALPA's argument that there is no division among the courts of appeal ignores the plain language of the decisions cited in the Petition. (Pet. at 24-25.) In both *Day v. Amax, Inc.*, 701 F.2d 1258, 1263-65 (8th Cir. 1983) and *Simpson v. Skelly Oil Co.*, 371 F.2d 563, 567-68 (8th Cir. 1967), the Eighth Circuit clearly stated that, in determining whether a motion under Rule 50 should be granted, it would look *solely* to the sufficiency of the *non-movant's* evidence and would not consider the movant's evidence. By contrast, in *St. Paul Fire & Marine Ins. Co. v. Vaughn*, 779 F.2d 1003 (4th Cir. 1985), the court stated that it would consider the non-movant's evidence "as well as any unfavorable evidence that the jury is required to believe." *Id.* at 1008. And in *Mattern v. Eastman Kodak*, 104 F.3d 702 (5th Cir.), *cert. denied*, 118 S.Ct. 336 (1997), the court of appeals stated that it would

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[3] As the advisory committee note explains, the purpose of the amendment was simply to clarify that "action taken under the rule is a performance of the court's duty to assure enforcement of the controlling law and is not an intrusion on any responsibility for factual determinations conferred on the jury by the Seventh Amendment or any other provision of federal law." As the pilots argue in their Petition, however, the court of appeals' articulation and use of an "overwhelming evidence" standard *does* intrude on the jury's responsibility under the Seventh Amendment to make factual determinations.

consider *all* of the evidence, "not just that evidence which supports the non-mover's case. . . . " *Id.* at 705.

Respected commentators have recognized for some time that these divergent statements of the appropriate standard of review under Rule 50 are not mere "semantics," but rather represent conflicting views of the legal requirements of that rule. *See* 9A Wright and Miller, *Federal Practice and Procedure*: Civil 2d § 2529 at 297-301 (1995) (commenting on split in the circuits as to portion of evidence that court can consider under Rule 50). *See also* Edward H. Cooper, *Directions for Directed Verdicts: A Compass for Federal Courts*, 55 Minn. L. Rev. 903 (1971). Conflicts as fundamental and pervasive as that which this Petition presents require the Court's attention.

4. In response to the argument that the court of appeals treated the pilots as a homogenous group, in violation of the joinder requirements of Rule 20(a), ALPA relies upon evidence of Pan Am's "unambiguous intention" to use requalification training, rather than training by system seniority. That evidence, ALPA claims, shows that Pan Am's conduct, not ALPA's, caused the pilots' injuries. (Opp. at 29.) As the pilots explained in their Petition, however, Pan Am's use of a requalification training methodology constituted a breach of the Pilots' Working Agreement, a breach in which ALPA itself participated. (Pet. at 27.) ALPA cannot now use Pan Am's participation in the breach as an excuse for its own improper actions in proximately causing the pilots' injuries. *See, e.g., Vaca v. Sipes*, 386 U.S. 171, 187 (1966).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARK R. KRAVITZ
DANIEL J. KLAU
WIGGIN & DANA
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400

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